



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 12, 2024

BY ECF

Hon. John G. Koeltl
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

*Time to answer the complaint extended to
2/9/24, Time to submit the Rule 26(f)
Report extended to 2/23/24.*

*1/18/24 So ordered.
L. Koeltl / U.S.D.J.*

Re: *Kunstler et al. v. Central Intelligence Agency et al.*, No. 22 Civ. 6913 (JGK)

Dear Judge Koeltl:

I write respectfully on behalf of the Central Intelligence Agency ("CIA") to seek an adjournment of approximately four months for the deadlines to answer the complaint and for the parties to submit a report pursuant to Federal Rule of Civil Procedure 26(f), ECF No. 76. The purpose of the request is to permit the Government to consider, among other things, the nature of discovery required to litigate this case, including whether the CIA Director may need to assert the State Secrets Privilege with respect to the matters in this litigation that remain after the Court's decision on the motion to dismiss. The surviving claim in this case relates to Plaintiffs' allegation that the CIA seized the contents of their electronic devices. Without confirming or denying those allegations, any inquiry into them would almost certainly implicate classified information.

The Department of Justice ("DOJ" or "Department") has established internal guidance for the invocation and the defense of the State Secrets Privilege in order to ensure that the privilege is asserted only in appropriate cases, where disclosure of information risks a genuine and significant harm to the national security, and then only to the extent necessary to safeguard those interests. DOJ procedures require multiple levels of review and consideration within each relevant agency, consultation within the Executive Branch, and the personal involvement of high-level officials. The decision whether the CIA will assert the State Secrets Privilege must be made by the CIA Director in consultation with the Director of National Intelligence. Any defense of an assertion of the State Secrets Privilege must be personally approved by the Attorney General after review by a special DOJ committee and others within the Department.

For these reasons, the Government respectfully requests an approximately four-month extension of the applicable deadlines. If this extension is granted, absent an invocation of the State Secrets Privilege or other intervening developments, the Government proposes that its answer to the complaint (as narrowed by the Court's decision on its motion to dismiss) will be due on **May 16, 2024**, and that the parties' Rule 26(f) report will be due on **May 28, 2024**.

The Government contacted counsel for Plaintiffs earlier this week and again today regarding the requested adjournment, but they have indicated that they need more time to consult with their clients as to what position Plaintiffs will take on this request.

I thank the Court for its consideration of this request.

Respectfully,

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cc: All parties (by ECF)